

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LA'MICHAEL ANTHONY TAYLOR,

Defendant-Appellant.

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UNPUBLISHED

September 23, 2004

No. 247715

Wayne Circuit Court

LC No. 02-013685-01

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for carjacking, MCL 750.529a, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of trial counsel. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). The failure to call witnesses or present other evidence can constitute ineffective assistance of counsel only when it deprives the defendant of a substantial defense. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). A substantial defense is one that might have made a difference in the outcome of the trial. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

There is no showing that counsel committed any serious strategic mistakes that deprived defendant of a substantial defense. Defendant failed to present counsel with the information necessary to identify and locate the alibi witnesses. The fact that defendant's fingerprints were not found on the car was presented at trial. Although the description of the assailant given by the complainant to police at the time of the offense was not explored at trial, there is no indication that the description was exculpatory. The lineup identification was subject to a *Wade* hearing,

and there is no indication that the identification was tainted. Finally, where defendant pointed a gun at complainant and took his car, scoring OV 17 for reckless disregard for life was supported by the evidence, and an objection would have been unsuccessful.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Christopher M. Murray  
/s/ Karen M. Fort Hood